

Order

Michigan Supreme Court Lansing, Michigan

May 24, 2005

ADM File No. 2005-16

Proposed Amendment of
Rule 4.101 of the
Michigan Court Rules

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 4.101 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining.]

Rule 4.101 Civil Infraction Actions

(A)-(B) [Unchanged.]

(C) Appearance by Police Officer at Informal Hearing.

If a police officer has been notified by the court to appear at an informal hearing, the police officer must appear at the informal hearing unless the State Court Administrative Office has approved a local administrative order allowing a defendant to waive the appearance of the police officer at the informal hearing. The order shall include provisions for:

- (1) allowing a defendant to waive the appearance of the police officer at the informal hearing.
- (2) receipt by the court of a written statement of the police officer setting forth the facts that the police officer would testify to at the informal hearing if present,
- (3) receipt of a copy of the police officer's written statement by the defendant at or before the commencement of the informal hearing,
- (4) a provision allowing the defendant, after having an opportunity to review the police officer's written statement, the right to request an adjournment without penalty to require the officer's presence at the hearing when such presence was previously waived, but only if the request for adjournment is made at or before the commencement of the informal hearing, and

- (5) procedures by which the court will notify the police officer of
- (a) the defendant's waiver of the officer's appearance,
 - (b) the right of the police officer to appear at the informal hearing, and
 - (c) the right of the police officer, in lieu of appearing at the informal hearing, to provide a written statement setting forth the facts that the police officer would testify to at the informal hearing.

Failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice.

~~(C)-(G)~~(D)-(H) [Renumbered but otherwise unchanged.]

Staff Comment: The proposed amendment of MCR 4.101 would require certain procedures to be implemented by courts to allow the waiver of a police officer's attendance at civil infraction informal hearings, and would establish procedures if the police officer fails to appear for a hearing.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-16. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 24, 2005

Angela J. Meyer
Deputy Clerk